

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ELIJAH WELLS, by and through his mother
SUZANNE GLOVER,

Plaintiff,

v.

CREIGHTON PREPARATORY SCHOOL, in
its official capacity,

Defendant.

Case No. 8:21-cv-322

**DEFENDANT’S BRIEF IN OPPOSITION
TO PLAINTIFF’S MOTION TO EXTEND
TIME**

This Brief is submitted in Opposition to Plaintiff’s Motion for Extension of Time to file a Brief in Opposition to Defendant’s Motion to Dismiss (Doc. #25) (Plaintiff’s Motion”). In opposition to Plaintiff’s Motion, Defendant shows to the Court as follows:

1. Plaintiff filed his first Complaint on August 24, 2021 (Doc. #1) – 175 days ago.
2. On October 13, 2021, Defendants agreed to accept service of the Complaint (Docs. #12 – #14).
3. On November 15, 2021, Defendants filed their Motion to Dismiss. (Doc. #15). Defendants brought Defendants’ Motion to Dismiss under 12(b)(6) for failure to state a claim and under 12(b)(1) due to lack of subject matter jurisdiction.
4. Defendants subsequently agreed to a generous 56-day extension for Plaintiff to respond to Defendants’ briefing on the pending Motion to Dismiss. (Doc #18).
5. Rather than respond to the pending Motion to Dismiss, Plaintiff filed an Amended Complaint on February 1, 2022 without seeking leave of Court or stipulation of counsel (Doc. #20).

6. Defendant then quickly prepared a new Motion to Dismiss and Brief in Support, and was able to file said Motion and Brief within 14 days of Plaintiff filing his Amended Complaint (Docs. #22 and #23).

7. Plaintiff now seeks to extend Plaintiff's date in which to respond to Defendant's Motion to Dismiss all the way out until March 25, 2022 – a deadline over 210 days after Plaintiff chose to initiate this action in this Court.

8. Defendant opposes Plaintiff's Motion for the following reasons:

- a. Defendant already agreed to a generous 56-day extension of time for Plaintiff to respond to Defendants' Motion to Dismiss and Brief in Support with respect to Plaintiff's first Complaint. Again, rather than use that time to respond to Defendants' Motion and Brief as agreed, Plaintiff chose to file an Amended Complaint without stipulation of counsel or leave of Court;
- b. As set forth in the briefing in this case, Defendant contends that Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted. Defendant also contends that Plaintiff's Amended Complaint implicates the ecclesiastical abstention doctrine of the First Amendment which means this Court lacks subject matter jurisdiction over this dispute. On those bases, Defendant requests dismissal of this case. Defendant therefore opposes continued delay in these proceedings.

WHEREFORE, Defendant respectfully requests that this Court overrule Plaintiff's Motion, or in the alternative, that this Court limit the extension of time to a smaller period (for example, ten (10) additional days from the current due date).

DATED this 15th day of February, 2022.

CREIGHTON PREPARATORY SCHOOL,
Defendant

By: /s/William N. Beerman
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification to the following:

Keith L. Altman
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/s/William N. Beerman